APPENDIX A

SUPREME COURT OF MISSOURI
en banc

No. 79708

MISSOURIANS FOR TAX JUSTICE
EDUCATION PROJECT, ET AL.,
Appellants,

v.

BOB HOLDEN, ET AL.,
Respondents.

Appeal from the Circuit Court of Cole County
Honorable Byron L. Kinder, Judge

DUPLICATE OF FILING ON: DEC. 23, 1997
IN OFFICE OF CLERK SUPREME COURT

Missourians for Tax Justice Education Project, Inc., and the Missouri Association for Social Welfare are not-for-profit Missouri corporations. Each of these appellants paid sales tax during the state's fiscal years 1995 and 1996, but paid no income tax. Larry C. Gaines and LaVonne Shinn, also appellants, are individual Missouri residents who paid sales tax but no income tax during the same fiscal years.

Article X. section 18(b) of the Missouri Constitution requires the government to refund state revenues on a pro rata basis to

Missouri state income taxpayers when "total state revenues" exceed the revenue limit established in article X, section 18(a) by more than one percent. Appellants insist that this refund provision violates constitutional guarantees of equal protection and due process because it discriminates against persons who paid no income taxes and these persons are generally poor. Appellants also claim that the entirety of the voter-approved tax and spending limitation contained in the constitution is too vague to accommodate rational application and, therefore, is void.

The trial court found the challenged provisions constitutional but issued a stay precluding the government from proceeding with its plans for distributing a refund pending this appeal. Because the validity of a provision of the state constitution is in question, we have jurisdiction. Mo. Const. art. V, sec. 3. The judgment of the trial court is affirmed. The stay previously entered by the trial court is dissolved.

I.

At the general election in 1980, Missouri voters approved an amendment to the constitution popularly dubbed "the Hancock Amendment." Mo. Const. art. X, sec. 16-24. The purpose of the Hancock Amendment is "to rein in increases in governmental revenue and expenditures." *Roberts v. McNary,* 636 S.W.2d 332, 336 (Mo. banc 1982). *See Beatty v. Metropolitan St. Louis Sewer District,* 867 S.W.2d 217, 221 (Mo. banc 1993) ("Reduced to its essence, the Hancock Amendment reveals the voters' basic distrust of the ability of representative government to keep its taxing and spending requirements in check.")

To achieve its purpose of reining in increases in governmental revenue and expenditures, the constitution establishes an annual revenue limit for state government and requires the state to disgorge the excess when its annual revenues exceed the constitutional revenue ceiling.

(a) There is hereby established a limit on the total amount of taxes which may be imposed by the general assembly in any fiscal year on the taxpayers of this state. Effective with fiscal year 1981-1982, and for each fiscal year thereafter, the general assembly shall not impose taxes of any kind which, together with all other revenues of the state, federal funds excluded, exceed the revenue limit established in this section. The revenue limit shall be calculated for each fiscal year and shall be equal to the product of the ratio of total state revenues in fiscal year 1980-1981 divided by the personal income of Missouri in calendar year 1979 multiplied by the personal income of Missouri in either the calendar year prior to the calendar year in which appropriations for the fiscal year for which the calculation is being made, or the average of personal income of Missouri in the previous three calendar years, whichever is greater.

(b) For any fiscal year in the event that total state revenues exceed the revenue limit established in this section by one percent or more, the excess revenues shall be refunded pro rata based on the liability reported on the Missouri state income tax (or its successor tax or taxes) annual returns filed following the close of such fiscal year. If the excess is less than one percent, this excess shall be transferred to the general revenue fund.

Mo. Const. art. X, sec. 18 (a) and (b).

Appellants claim that a pro-rata refund to income taxpayers violates equal protection, U.S. Const. amend XIV, and due process.[1] In support of their equal protection argument, appel-

[1]Appellants' due process argument is apparently not serious. Their brief makes its due process argument in less than a full page and cites no case authority. Appellants insist that a refund of state moneys collected by all of

Cont'd on page 4.

lants offer two arguments: First, they claim that the purpose of the Hancock Amendment is not a legitimate state purpose. Second, appellants urge this Court to declare poverty a suspect classification to which strict scrutiny equal protection analysis applies.

A.

When considering claims that a law violates the Equal Protection Clause, the first step is to determine whether the statutory scheme "operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution . . . ." *San Antonio Independent School Dist. v. Rodriguez,* 411 U.S. 1, 17 (1973); *State Board of Registration v. Griffen,* 651 S.W.2d 475, 479 (Mo. banc 1983). If so, the statutory scheme receives strict judicial scrutiny to determine whether the classification is necessary to accomplish a compelling state interest. *Id.* If the classification neither burdens a suspect class, nor impinges upon a fundamental right, the

Footnote 1 *cont'd from page 3.*

the state's taxes to income taxpayers only is a taking from the poor for the private advantage of the not-poor, without due process of law. Appellants are convinced that this scheme violates the Fifth and Fourteenth Amendments to the federal constitution and article I, sections 10 and 28 of the state constitution.

If there is a taking in this case, it occurs when the tax is demanded and collected. The refund is not a taking for the private purposes of the not-poor because the funds from which the refund is made were not collected for that purpose. The taxes collected are collected for the purpose of funding governmental operations and programs, many of which directly benefit the poor whom these appellants claim to champion. Until a fiscal year closes, the government does not know whether it owes a refund or not.

We are not prepared to hold—as appellant's argument seems to assert when properly understood—that the government's ***collection*** of taxes constitutes a taking in violation of due process. The Sixteenth Amendment to the federal constitution and article X, sections 1 and 2 of the state constitution resolve that argument in the government's favor.

only issue is whether the classification is rationally related to a legitimate state interest. *Friedman v. Rogers,* 440 U.S. 1, 17 (1979); *Griffen, supra,* 651 S.W.2d at 479. The burden is on the person attacking the classification to show that it does not rest upon any reasonable basis and is purely arbitrary. *Lindsley v. Natural Carbonic Gas Co.,* 220 U.S. 61, 78-79 (1911); *City of St. Louis v. Liberman,* 547 S.W.2d 452, 458 (Mo. banc 1977). Under this analysis a classification is constitutional if any state of facts can be reasonably conceived that would justify it. *McGowan v. Maryland,* 366 U.S. 420, 426 (1961); *Liberman, supra,* 547 S.W.2d at 458.

A suspect classification exists where a group of persons is legally categorized and the resulting class is "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Rodriguez,* 411 U.S. at 28. Classifications based on wealth/poverty do not fit this description.

> That wealth classifications *alone* have not necessarily been considered to bear the same high degree of suspectness [sic] as have classifications based on, for instance, race or alienage may be explainable on a number of grounds. The "poor" may not be seen as politically powerless as certain discrete and insular minority groups. . . . [P]ersonal poverty is not a permanent disability; its shackles may be escaped. Perhaps most importantly, though, personal wealth may not necessarily share the general irrelevance as a basis for legislative action that race or nationality is recognized to have.

(Emphasis added). *Id.* at 121. (Marshall, J., dissenting). Thus, the United States Supreme Court "has never. . . held that wealth discrimination *alone* provides an adequate basis for invoking strict scrutiny. . . ."(Emphasis added). *Id.* at 29.

The use of the word "alone" in the *Rodriguez* majority opinion and dissent is significant. Where the Supreme Court has applied strict scrutiny to a wealth-based classification, it has found that the wealth-based classification also implicated a fundamental right.[2] As appellants lay no claim to a loss of any fundamental right in connection with the refund plan contained in section 18(b), they ask this Court to declare poverty a suspect classification on that basis alone. We decline their invitation and hold that the classification between income taxpayers and other taxpayers established in section 18(b) does not create a suspect classification.

B.

A legal classification considered under a rational basis standard will survive judicial examination if the state's purpose in creating the classification is legitimate, *Zobel v. Williams*, 457 U.S. 55, 60 (1982), and "if any state of facts reasonably may be conceived to justify" the classification chosen to accomplish that purpose. *McGowan v. Maryland,* 366 U.S. at 426.

Appellants rely on *Zobel* and *Quinn v. Milisap,* 491 U.S. 95 (1989), apparently convinced that these cases reject wealth-based classification under a rational basis test and, therefore, control this case. We disagree.

In *Zobel,* Alaska decided to distribute a financial windfall to the state resulting from the discovery of oil at Prudhoe Bay to the state's adult residents. The plan, initiated in 1979, permitted each adult resident to receive a specified dollar amount for every year

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[2]For example, one group of cases deals with the right to vote or be a candidate for office. *Bullock v. Carter,* 405 U.S. 134 (1972) (candidates' filing fees). E.g., *Harper v. Virginia Board of Elections,* 383 U.S. 663 (1966) (poll tax). A second group addresses wealth classifications that impinge on access to the judicial system. E.g., *Douglas v. California,* 372 U.S. 353 (1963) (ability to pursue an appeal); *Griffin v. Illinois,* 351 U.S. 12 (1956) (payment of transcript on appeal fees).

of residency since statehood in 1959. Short-term Alaska residents challenged the plan, claiming that the enhanced dividend payment to long-term Alaskans violated the Equal Protection Clause. Alaska argued that the dividend created a financial incentive for persons to establish and maintain residence in Alaska, encouraged prudent management of the fund created from the oil revenues and recognized residents' undefined contributions to the state during their years of residency since statehood. The plurality opinion found the first two objectives "not rationally related to the distinctions Alaska seeks to make between newer residents and those who have been in the State since 1959." *Id.* at 61. The third rationale "is not a legitimate state purpose" *id.* at 63, because the Equal Protection Clause does not recognize an apportionment of state services based on length of residency in the state. *Shapiro v. Thompson*, 394 U.S. 618, 632-3 (1969). For these reasons, the *Zobel* court struck down the Alaska dividend plan as a violation of equal protection.

In *Quinn*, the Supreme Court struck down a provision of the Missouri constitution, art. VI, sec. 30(a), requiring that persons appointed to a commission to consider reorganization of city and county government in the St. Louis area own real property. Relying on *Turner v. Fouche*, 396 U.S. 346 (1970), the Supreme Court held that the landowner requirement was not rationally related to any legitimate state interest.

Appellants claim that the Hancock Amendment contains an illegitimate purpose. They insist that the purpose of the Hancock Amendment is to provide a refund to income taxpayers. Under *Zobel*, if the government's purpose is not legitimate, the means chosen to implement that purpose, however rational, cannot save the law from condemnation by the Equal Protection Clause.

Appellant's argument, while serving appellants' own purposes, confuses means with end and ignores this Court's long-standing, consistent reading of the Hancock Amendment's

purpose: "to rein in increases in governmental revenue and expenditures." *Roberts,* 636 S.W.2d at 336. Constitutional demands that the government operate in a fiscally-prudent manner and live within its fiscal means are legitimate state purposes.

If the purposes of the law are legitimate, all that remains is to determine whether the means chosen to implement the law is rationally related to achieving that purpose. The refund mechanism employed by section 18(b) is rationally related to the Hancock Amendment's purpose for at least four reasons.

First, the refund commanded by section 18(b) is a penalty imposed on the government for collecting too much revenue. To make the government give back money to the persons from whom it took the excess revenue rationally serves the purposes of the Hancock Amendment previously expressed.

Second, the specific refund method chosen in section 18(b) to carry out the amendment's purpose is also rational. The amendment's revenue calculations are year-specific. An income taxpayer's actual contribution to the government's excess revenue in the fiscal year in question is readily and accurately ascertainable. It is true, as appellants claim, that the state can estimate a person's sales tax payments for a given fiscal period. But it is also true that the existence of another, even more mathematically precise method of achieving the constitution's purposes does not render the chosen method irrational for equal protection purposes. "[R]ational distinctions may be made with substantially less than mathematical exactitude." *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

Third, any other form of refund suggested by appellants would not refund excess state revenue on the basis of a person's contribution to the excess. It is true that a per capita refund to all state residents would provide refunds to persons who paid no income tax but such a refund would make no effort to determine

any person's share of the contribution to the state's excess revenue. If a refund based on an estimate of an individual's sales tax liability forms the basis for a refund -- as appellants' counsel suggested it might during oral argument -- the estimate can be determined only by reference to individual income. A refund mechanism that focuses on income taxpayers accounts indirectly for sales tax payments made by most income taxpayers and more accurately reflects a person's actual contribution to the state's excess revenue than either a per capita or a sales tax refund would. For this reason, an income tax refund is more mathematically precise in directing refunds to persons based on actual contributions to the state's excess revenue than either a per capita tax refund or a refund based solely on sales tax estimates.

Fourth, a refund system that focuses on income tax allows persons who earned income in Missouri and paid income tax to this state but who live in other states to participate. This state's sales tax scheme permits no identification of persons who pay sales tax. An income tax refund plan defeats any argument, however specious, that the Hancock Amendment discriminates against non-Missouri residents in violation of the negative command[3] of the Commerce Clause, U.S. Const. art. I, sec. 8, cl. 3, the Privileges and Immunities Clauses, U.S. Const. art. IV, sec. 2, cl. 1, and amend. XIV, sec. 1, or the right to travel announced in *Shapiro*.

These reasons are sufficient to permit us to conclude that the Hancock Amendment furthers a legitimate state purpose and that the refund mechanism employed in section 18(b) is a rational means of achieving that purpose.

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[3]The Commerce Clause "embodies a negative command forbidding the States to discriminate against interstate trade." *Associated Industries of Missouri v. Lohman*, _ U.S._, _, 114 S.Ct. 1815, 1820 (1994).

II.

Appellants' second point asserts that the revenue limit contained in section 18(a) is too vague to permit enforcement. "Any effort to assign various revenues of the state to 'total state revenues' or to exclude them is an arbitrary exercise. By the same token, there is no rational basis for determining what should go into . . . the 'personal income of Missouri.'" App. Br. at 24. Though the words do not appear in the second point in their brief, we assume that casserole of conclusions and catchphrases appellants employ assert a due process violation.

Appellant's argument confuses ambiguity with vagueness. Vagueness that violates due process exists where a law speaks with such uncertainty that it permits arbitrary and discriminatory enforcement, *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972), or in such a way that a person of ordinary intelligence does not receive fair notice from the language employed in the law what conduct that law requires or forbids. *United States v. Harriss*, 347 U.S. 612, 617 (1954).

Courts have long accepted responsibility for providing meaning to laws that are ambiguous. Well-accepted canons of construction inform this process, as does the Court's duty to uphold ambiguous laws where it is possible to interpret those laws in a manner that conforms to the demands of the constitution. *See Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. banc 1981) ("This Court's duty is not to seek to condemn the [Hancock] amendment, but to seek to uphold it if possible.").

Ambiguity in a law does not violate due process. "[T]he constitutional due process demand is met if the words used bear a meaning commonly understood by persons of ordinary intelligence." *State v. Allen*, 905 S.W.2d 874, 877 (Mo. banc 1995).

A.

"Total state revenues"

> includes all general and special revenues, license and fees, excluding federal funds, as defined in the budget message of the governor for fiscal year 1980-1981. Total state revenues shall exclude the amount of any credits based on actual tax liabilities or the imputed tax components of rental payments, but shall include the amount of any credits not related to actual tax liabilities.

Mo. Const. art. X. sec. 17(1). In part pertinent to our discussion, section 18(a) provides:

> The revenue limit shall be calculated for each fiscal year and shall be equal to the product of the ratio of total state revenues in fiscal year 1980-1981 divided by the personal income of Missouri in calendar year 1979 multiplied by the personal income of Missouri in either the calendar year prior to the calendar year in which appropriations for the fiscal year for which the calculation is being made, or the average of personal income of Missouri in the previous three calendar years, whichever is greater.

In *Buechner v. Bond,* 650 S.W.2d 611 (Mo. banc 1983), this Court faced two questions: Whether "unspent revenue from prior fiscal years 1979-80, the 1980-81 opening balance, is a component portion of general revenue to be included in total state revenue" and whether "'total state revenues' as used in sections 18(a) and 17(1) of article X is not capable of definition and therefore void." *Id.* at 612. We quote the Court's decision at length because it clearly describes the Court's duty and directly addresses appellants' second point.

> The rules applicable to construction of statutes are applicable to the construction of constitutional provisions; the

> latter are given broader construction due to their more permanent character. *Boone County Court v. State,* 631 S.W.2d 321, 325 (Mo. banc 1982). Words used in constitutional provisions must be viewed in context; their use is presumed intended, and not meaningless surplusage. *Roberts v. McNary,* 636 S.W.2d 332, 335 (Mo. banc 1982). The words used in constitutional provisions are interpreted so as to give effect to their plain, ordinary and natural meaning. *Boone County,* 631 S.W.2d at 324; *State ex inf. Danforth v. Cason,* 507 S.W.2d 405, 408 (Mo. banc 1973). The plain, ordinary, and natural meaning of words is that meaning which the people commonly understood the words to have when the provision was adopted. *Boone County,* 631 S.W.2d at 324; *Cason,* 507 S.W.2d at 408. The commonly understood meaning of words is derived from the dictionary. *Boone County,* 631 S.W.2d at 324.
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> * * *
>
> Every word in a constitutional provision is presumed to have effect and meaning. *McNary,* 636 S.W.2d at 335. The word "revenue" is not defined in any of these sections [of the Hancock Amendment]; therefore, it will be accorded its plain, ordinary, and natural meaning as found in the dictionary. "Revenue" is defined as "the annual or periodical yield of taxes, excises, customs, duties, and other sources of income that a nation, state or municipality collects and receives into the treasury for public use. . . ." Webster's Third New International Dictionary 1942 (1964).

Based on the common, ordinary definitions upon which this Court relied in *Buechner,* it is apparent that "total state revenue" is the sum (total) of "taxes, excises, customs, duties, and other sources of income" the state receives into its treasury in a given fiscal year. Except as to "credits not related to actual tax liabilities," this is a cash basis accounting definition because it

requires actual receipt of the revenue by the state. Moneys not paid into the treasury, *see* Mo. Const. art. IV, sec. 15 (defining nonstate funds), or not received in the fiscal year in question are not part of "total state revenues."

The Court's interpretation of "total state revenues" in *Buechner* is consistent with time-honored principles of constitutional construction. It resolves all accounting controversies surrounding the meaning of total state revenues. It also renders the meaning of "total state revenues" sufficiently precise as to permit enforcement. Section 18(a) does not violate due process.

B.

The constitution defines "personal income of Missouri" as the total income received by persons in Missouri from all sources, as defined and officially reported by the United States Department of Commerce or its successor agency." Mo. Const. art. X, sec. 17(2). Appellants concede that the Department of Commerce publishes the calculation to which section 17(2) refers. They complain, however, that the figure is constantly updated over the course of years as more information becomes available to the Commerce Department. As a result, appellants argue, the true amount of income received by persons in Missouri can never be precisely known. Significantly, appellants do not attack the government's selection of a particular Commerce Department report calculating personal income of Missouri.

The purpose of the tax and spending limitations contained in the Hancock Amendment is not thwarted if the calculation of the revenue limit is not accurate to the mill. The definition of "personal income of Missouri" contained in section 17(2) erects a sufficiently definable standard to permit those who wish to enforce the revenue limit to do so.

III.

The judgment of the trial court is affirmed. The stay previously entered by the trial court is dissolved.

EDWARD D. ROBERTSON, JR.
JUDGE

All concur.

APPENDIX B

CLERK OF THE SUPREME COURT

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January 27, 1998

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Ms. Kathleen G. Henry
Suite 1830
314 North Broadway
St. Louis, Missouri 63102

Ir re: Missourians for Tax Justice Education Project, et al. vs. Bob Holden, et al. Supreme Court No. 79708

Dear Counsel:

This is to advise that the Court this day entered the following order in the above-entitled cause:

"Appellant's motion for rehearing overruled."

Yours very truly,

THOMAS F. SIMON

/s/Christina S. Vinson
Deputy Clerk, Court en Banc

cc: Mr. James R. Layton, Chief Deputy Attorney General

APPENDIX C

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

DIVISION II

No. CV196-1098CC

MISSOURIANS FOR TAX JUSTICE EDUCATION PROJECT,et al.,
Plaintiffs,

v.

BOB HOLDEN, et al.,
Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Findings of Fact

1. Plaintiffs Larry C. Gaines and LaVonne Shinn are residents of the State of Missouri. During fiscal 1995 (July 1, 1994 to June 30, 1995) plaintiffs Gaines and Shinn paid Missouri state sales taxes and other state taxes, but did not pay any Missouri income tax or report any Missouri income tax liability on individual income tax returns filed during fiscal 1996.

2. Plaintiff Missourians for Tax Justice Education Project, Inc. ("MTJEP") is a corporation organized and existing under the general not-for-profit corporation laws of the State of Missouri, with its principal office and place of business in the State of Missouri. Plaintiff Missouri Association for Social Welfare ("MASW") is a not-for-profit corporation organized as a pro forma decree corporation under the Missouri corporation laws, with its principal place of business in the State of Missouri. During fiscal 1995 (July 1, 1994 to June 30, 1995) plaintiffs MTJEP and MASW paid Missouri state sales taxes and other

state taxes, but did not pay any Missouri income tax or report any Missouri income tax liability on corporate income tax returns filed during fiscal 1996.

3. Defendants are Mel Carnahan, the duly elected Governor of Missouri; Richard Hanson, the duly appointed Commissioner of Administration of Missouri; Bob Holden, the duly elected State Treasurer; and Janette Lohman, the duly appointed Director of Revenue.

4. The Office of Administration has determined that for fiscal 1995, the "total state revenue" as defined in Article X, § 17(1), exceeded the revenue limit established by Article X, § 18(a) of the Missouri Constitution, by approximately $147 million ("the excess revenue").

5. Pursuant to Article X, § 18(b) and Senate Bill No. 500, 88th General Assembly, 2d Regular Session, the State of Missouri is required to pay the excess revenue from fiscal 1995 to Missouri income tax payers, based on the income tax liability they reported on Missouri state income tax returns filed during fiscal 1996.

6. The defendants have initiated and are carrying out preparations to pay the "excess revenue" to Missouri income tax payers pursuant to the mandate of Article X, § 18(b) and Senate Bill No. 500, 88th General Assembly, 2d Regular Session.

7. The General Assembly has appropriated approximately $147 million for that purpose in the Conference Committee Substitute for House Bill No. 1004, 88th General Assembly, 2d Regular Session.

8. The "total state revenue" for fiscal 1995, as calculated by defendants, included revenue from many sources. Income taxes paid in fiscal 1995 accounted for somewhat more than half of that

total. Other significant sources of revenue included sales taxes, motor fuel taxes, and use taxes.

9. Of those persons who filed Missouri income tax returns in fiscal 1996 showing that they were liable for Missouri income tax, there are some who neither owed nor paid Missouri income tax during fiscal 1995. The defendants are nonetheless preparing to pay to those taxpayers a refund based on a proportional share of the "excess revenue" pursuant to Article X, § 18.

10. Pursuant to Article X, § 18(a) of the Missouri Constitution, those persons who paid sales, use, motor fuel, cigarette or other state taxes or fees during fiscal 1995, but who did not file Missouri income tax returns during fiscal 1996 showing income tax liability, will not receive any of the "excess revenue" that defendants are preparing to pay to Missouri income taxpayers to be refunded.

11. Missourians in the lowest income brackets who do not incur any net income tax liability pay a larger percentage of their gross income in sales taxes than do Missourians in higher income brackets. But those in higher income brackets pay a greater amount of sales taxes than those in the lowest brackets—in addition to paying the income taxes that these plaintiffs have been able to avoid. Furthermore, those Missourians in the lowest income brackets who incur no net income tax liability receive transfer payments and other subsidies such as food stamps and the earned income tax credit which allow them to consume far in excess of their stated gross income. Defendants' Exhibit A.

12. The procedure that the defendants use to comply with the requirements of Article X, § 18, and S.B. 500 is: (1) determine the amount of excess revenue; (2) determine the total amount of income tax liability for annual returns filed during Fiscal year 1996; (3) divide each income taxpayer's paid income tax liability for annual returns filed during Fiscal Year 1996 into the total

amount of paid income tax liability for annual returns filed during Fiscal Year 1996, thus deriving a percentage or ratio; (4) apply that percentage or ratio to the total amount of excess revenue to establish the amount of each income taxpayer's refund; (5) prepare and mail a check to each such income taxpayer for that amount. For the excess revenue received during fiscal 1995, steps 1 through 4 are completed; step 5 was not completed because of the temporary restraining order entered by this Court.

13. The defendants will send out approximately 2 million payment checks pursuant to the procedure outlined above. Taxpayers with families and those filing joint returns will receive one check, so that the number of persons actually benefiting from the payments will be greater than the number of payment checks sent. The payments will amount to approximately five per cent of the income tax liability reported on each recipient's last return filed during fiscal 1996. The median payment to those individuals who paid Missouri income tax will be approximately $41. The median income tax liability for those individuals who paid income tax during Fiscal Year 1996 was $677. The median taxable income of those individuals paying Missouri income tax during fiscal year 1996 was $29,000.

14. Since § 18 became effective in 1981, all governors of Missouri—governors Bond, Ashcroft, and Carnahan—have interpreted the terms "total state revenue," "revenue limit," and "personal income of Missouri" for any in calendar year in a consistent fashion. Throughout that period, the State Auditors—Auditors Antonio and Kelly—did not dispute the governors' interpretation of the terms "personal income of Missouri" and "revenue limit." Since 1993, Auditor Kelly has, however, disagreed with the governors' and auditors' prior interpretations of the term, "total state revenue." Exhibit 5, Auditor's Report for Year Ending June 30, 1995, Pages 38-39.

Conclusions of Law

The plaintiffs challenge the constitutionality of Article X, §§ 18(a) and (b) of the Missouri Constitution, provisions of what is commonly referred to as the Hancock Amendment. The purpose of these provisions is to limit taxation and the growth of state government by limiting the amount of revenue that may be collected and retained by the state in a given fiscal year and mandating that excess revenues collected be "refunded pro rata based on the liability reported on the Missouri state income tax . . . annual returns filed following the close of such fiscal year." Mo. Const. art. X, § 18(b).

In their first amended petition, plaintiffs ask this Court to render both the revenue limit provision and its enforcement mechanism, the refund provision, nullities. Plaintiffs contend that the refund mechanism violates the Equal Protection Clause of the U.S. Constitution and that, in basing refunds on income tax paid rather than giving money back to everyone who paid taxes to Missouri, it constitutes an illegal "taking" of the property of those who did not pay income tax but who did pay other Missouri taxes. Plaintiffs contend that the refund mechanism violates not only the U.S. Constitution, but various provisions of the Missouri Constitution as well. Finally, plaintiffs argue that terms used to determine revenue limits in § 18(a), such as "personal income of Missouri," "total state revenue," and "revenue limit," are so loosely defined as to render that provision void for vagueness. As explained below, the Court finds no merit to plaintiffs' challenges.

As the Missouri Supreme Court has previously observed with respect to the Hancock Amendment, "[s]ince the amendment has . . . been adopted and the people have stated their will, this Court's duty is not to seek to condemn the amendment, but to seek to uphold it if possible." *Buchanan v. Kirkpatrick*, 615 S.W.2d 6. 12 (Mo. banc 1981).

The Court initially notes that plaintiffs' assertion that the challenged provisions violate the very Constitution that they amend are patently meritless. "The 'inherent, sole and exclusive right' of the people to amend, 'alter and abolish their constitution and form of government' is expressly made subject to the provisions that 'such change be not repugnant to the Constitution of the United States.'" *Id.* at 16, quoting Mo. Const. art. I, § 3. The only question, then, is whether the challenged provisions violate the United States Constitution.

In their equal protection challenge of the Hancock Amendment's enforcement mechanism, the refund provision of § 18(b), plaintiffs adopt the positions of Judges Morgan and Rendlen of the Missouri Supreme Court that the refund mechanism favors the relatively wealthy over the relatively poor by paying out excess revenues only to income taxpayers and not proportionally to all payers of Missouri taxes. *See Buchanan v. Kirkpatrick*, 615 S.W.2d at 16-17; *Buechner v. Bond*, 650 S.W.2d 611, 615-16 (Mo. banc 1993). Plaintiffs contend that § 18(b) impermissibly creates and disparately treats two classes of taxpayers: (1) those who paid income taxes for calendar year 1995, and (2) all other taxpayers. Plaintiffs point out that some members of the first class did not pay income taxes to Missouri during fiscal year 1995.

Plaintiffs use the first class of taxpayers as a proxy for the relatively wealthy and the second class of taxpayers as a proxy for the relatively poor. The United States Supreme Court has consistently rejected the notion that a "suspect class" can be defined by wealth or income alone. *San Antonio School District v. Rodriquez,* 411 U.S. 1, 28-29 (1973); *Harris v. McRae*, 448 U.S. 297, 322 (1980). Since the Supreme Court has "never heretofore held that wealth discrimination alone provides an adequate basis for invoking strict scrutiny" (*Rodriquez*, 411 U.S. at 70), § 18(b) will be upheld if it "bear[s] some rational

relationship to a legitimate state end." *McDonald v. Board of Election Commsrs. of Chicago,* 394 U.S. 802, 809 (1969).

The legitimate state end of the Hancock Amendment, as recognized by the Missouri Supreme Court, is "to limit taxes by establishing tax and revenue limits and expenditure limits for the state and other political subdivisions which may not be exceeded without voter approval." *Buchanan v. Kirkpatrick*, 615 S.W.2d at 13. "[T]he objectives of the Hancock Amendment [were] clearly understood by the voters—to rein in increases in governmental revenue and expenditures." *Roberts v. McNary*, 636 S.W.2d 332, 336 (Mo. banc 1982). As the Missouri Supreme Court also observed, the "provisions relating to the repayment of excess revenues collected are properly connected to the single controlling purpose of the amendment: to limit taxes and governmental expenditures within the state of Missouri." *Buchanan v. Kirkpatrick*, 615 S.W.2d at 14.

The testimony of plaintiffs' own expert supports this conclusion. While noting that the second largest tax in Missouri is the sales tax, he conceded that sales taxes cannot, as a practical matter, be refunded pro rata to those who paid them. While plaintiffs expert was able to name a few other taxes besides the income tax that could be attributed to particular individuals and thus refunded to them, refunding those taxes would be of little or no benefit to plaintiffs. More importantly, the availability of other means of reducing excess revenues does not render § 18(b)'s income tax refund scheme unreasonable. Plaintiffs' expert conceded, and this Court holds, that selecting the income tax from among the panoply of state taxes on which refunds could be based was a rational choice.

Plaintiffs complain that the mismatch between the fiscal year, from which excess revenue is calculated, and the income tax year (which for individuals is a calendar year), from which refunds

are calculated, is infirm because some income taxpayers will receive refunds although they did not contribute to excess revenue. This does not render the refunds irrational as a means of enforcing the Hancock Amendment's tax and spending lid. For one thing, the only state taxes that can be directly correlated with the state's fiscal year are consumption taxes, and refunding them is impossible. Refunding income taxes is not only possible, it succeeds in achieving the purpose of the amendment. Furthermore, although § 18(b) speaks of refunds of excess revenues, these refunds could just as easily be characterized a recalculation of income tax liability to offset excess revenues. It is unclear how a redetermination of income tax rates, whatever the reason for it, can support any claim of disparate treatment by those who do not even pay any income tax at all.

Which leads to plaintiffs' argument that the refunds of § 18(b) are a "taking" from the poor for the benefit of the rich. There is no factual support for this contention. Income taxpayers will not receive anything in excess of what they have already paid in income taxes. And, like plaintiffs, they will receive no portion of consumption taxes that they have paid.

Plaintiffs cite no authority, and the Court finds none, stating that plaintiffs must be given "due process" before tax rates applied to someone else are changed. However, even if plaintiffs' characterization were correct, that the refunds are a transfer of benefits from non-income taxpayers to income taxpayers, plaintiffs would be no more entitled to due process than would income taxpayers whose taxes are used to subsidize the poor with food stamps and other transfer payments. The Court notes that those Missourians with the lowest levels of gross income have levels of consumption in excess of that income thanks to these very types of transfer payments. To find a due process violation in the subsidization of one citizen through taxes paid by another would be far more harmful than helpful to plaintiffs.

Ironically, since the Hancock refunds are themselves largely taxable by the federal government, they constitute yet another source of funding for transfer payments to the poor.

In any event, the question of relative tax burden is one suited for legislative rather than judicial action. As the United States Supreme Court asked rhetorically, "But who can adjust with precise accuracy the amount which each individual in an organized civil community shall contribute to sustain it, or who can insure in this respect absolute equality of burdens, and fairness in their distribution among those who must bear them?" *Kelly v. Pittsburgh*, 104 U.S. 78, 82 (1881). It is not the courts, as they have "consistently refused . . . to undertake the task of passing on the 'reasonableness' of a tax that otherwise is within the power . . . of state legislative authorities." *Pittsburgh v. Alco Parking Corp.*, 417 U.S. 369, 373 (1974).

Plaintiffs' final attack on § 18 is that various critical terms such as "total state revenue" are so vague that the whole tax and spending limit is unenforceable. The Court is unaware of any instance in which a constitutional provision has ever been declared void for vagueness. While a statute may be unconstitutionally vague if it fails to give a person of ordinary intelligence fair notice that his or her conduct is forbidden, or if its standards lack sufficient specificity to prevent arbitrary enforcement, *e.g. State v. Stone*, 926 S.W.2d 895, 899 (Mo.App., W.D. 1996), the constitutional provisions in question do not proscribe individual conduct or threaten individuals with any sort of penalty. Rather, they regulate governmental taxation and spending and thus are not subject to attack for vagueness.

Notably, plaintiffs do not contend that the defendants' actions are inconsistent with the dictates of the Hancock Amendment. Nor do they point to any variation in interpretation from any of three governors over the course of fifteen year that would suggest some difficulty in applying § 18(a). Nor do they suggest

why the legislature might be precluded from answering questions about the Hancock Amendment, if addition detail were needed. In fact, they do not question the validity of the enactment and application of Senate Bill No. 500, 88th General Assembly, 2d Regular Session, which provides such clarification for other aspects of § 18.

Despite the ability of some to point out alternative approaches to applying § 18(a), this Court holds that § 18(a) is sufficiently defined to meet constitutional standards.

ORDER AND JUDGMENT

WHEREFORE, it is ORDERED, ADJUDGED and DECREED:

Plaintiffs' request for declaratory and injunctive relief is DENIED.

It is further ORDERED, ADJUDGED and DECREED that plaintiffs' request for an award of expenses of litigation, including attorney's fees and costs, is DENIED.

Dated: 1-6-97 /s/Byron L. Kinder, Judge

APPENDIX D

CLERK OF THE SUPREME COURT

STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102

THOMAS F. SIMON
CLERK

TELEPHONE
(573) 751-4144

February 2, 1998

Mr. Lewis C. Green
Mr. Bruce A. Morrison
Ms. Kathleen G. Henry
314 North Broadway, Suite 1830
St. Louis, Missouri 63102

In Re: Missourians for Tax Justice Education Project, Inc., et al.
vs. Bob Holden, et al.
Missouri Supreme Court No. 79708

Dear Counsel:

Pursuant to my conversation with Mr. Green on January 30, 1998, the mandate in this cause issued on January 29, 1998. Therefore, there is no case pending before the Court in which to file Appellant's motion for stay pending certiorari proceedings. Your pleadings received by this office on January 30, 1998, are returned to you with this letter.

Very truly yours,

THOMAS F. SIMON

/s/Cynthia L. Turley
Deputy Clerk, Court en Banc

cc:
Missouri Attorney General/Mr. James R. Layton

APPENDIX E

IN THE CIRCUIT COURT OF COLE COUNTY,
STATE OF MISSOURI

DIVISION TWO

No. CV196-1098CC

MISSOURIANS FOR TAX JUSTICE EDUCATION PROJECT, INC., et al.,
Plaintiffs-appellants,

v.

BOB HOLDEN, et al.,
Defendants-respondents.

PLAINTIFFS' MOTION FOR STAY PENDING CERTIORARI PROCEEDINGS

Come now plaintiffs and show:

1. On January 28 appellants' counsel was notified by the Clerk that, on January 27, 1998, the Court had overruled appellants' motion for rehearing. On January 29 plaintiffs dispatched a motion for stay to the Supreme Court. On January 30, the Supreme Court Clerk telephoned to say that the mandate had issued on January 29, and the motion could not be filed.

2. Plaintiffs have been informed that, unless stayed, the state will commence mailing the "excess revenues" for 1995 and 1996 on Monday, February 2, to income taxpayers, although the Department of Revenue now concedes that only 43% of the "excess revenues" were generated from Missouri income taxes. After the checks have been mailed, it will be virtually impossible to restore the status quo.

3. Plaintiffs have been advised by counsel that the ruling of this Court is appropriate for review by the United States

Supreme Court. Plaintiffs are actively considering the filing of a petition for certiorari. That petition is to be filed no later than ninety days after January 27, 1998. Rule 13, U.S. Sup. Ct. Rules.

WHEREFORE, appellants pray that this Court stay the mailing of refund checks pending certiorari proceedings, or if no petition for certiorari is timely filed, until April 27, 1998.

/s/Lewis C. Green

Lewis C. Green (Mo. Bar # 14547)
Bruce A. Morrison (Mo. Bar # 38359)
Kathleen G. Henry (Mo. Bar # 39504)
Green, Hennings & Henry
314 North Broadway, Suite 1830
St. Louis, Missouri 63102
(314) 231-4181, Facsimile 231-4184
Attorneys for plaintiffs

PROOF OF SERVICE

The undersigned certifies that a complete copy of the foregoing was served upon defendants' attorney of record by enclosing the same in an envelope addressed to him, as set forth below, with first-class postage fully prepaid, and by depositing said envelope in a United States post office mail box in St. Louis, Missouri, on the 30th day of January, 1998.

James R. Layton, Esq.
Chief Deputy Attorney General
Office of Attorney General
P.O. Box 899
Jefferson City, Missouri 65102

/s/Lewis C. Green

DEFENDANT'S EXHIBIT A 9-25-96 KDH

MISSOURI ESTIMATES USING U.S. DATA

Prepared by Craig L. Israelsen, Ph.D. University of Missouri

Income Percentiles by 5% Increments	Gross Income	Take-home pay percentage	Net Income	Total Expenditures	Sales Tax Paid	Taxable Income %	[--------Missouri--------] Taxable Income	Tax Rate	Income Tax Paid	Hancock Refund .05	Sales Tax as a Percentage of... Gross	Net	Total Expenditure
Lowest to the 5th	$4,113	1.00	$4,113	$12,086	$438	.00	$0	0	$0	$0	10.6%	10.6%	3.6%
10th	$6,518	1.00	$6,518	$13,459	$489	.00	$0	0	$0	$0	7.5%	7.5%	3.6%
15th	$8,923	1.00	$8,923	$14,832	$541	.70	$6,246	.0267	$167	$8	6.1%	6.1%	3.6%
20th	$11,329	.98	$11,102	$16,206	$592	.70	$7,930	.0311	$247	$12	5.2%	5.3%	3.7%
25th	$13,734	.95	$13,047	$17,579	$644	.70	$9,614	.0347	$334	$17	4.7%	4.9%	3.7%
30th	$16,139	.93	$14,929	$18,952	$695	.70	$11,297	.04	$452	$23	4.3%	4.7%	3.7%
35th	$19,249	.90	$17,324	$20,671	$768	.70	$13,474	.0415	$559	$28	4.0%	4.4%	3.7%
40th	$22,359	.88	$19,564	$22,390	$842	.70	$15,651	.0425	$665	$33	3.8%	4.3%	3.8%
45th	$25,468	.85	$21,648	$24,108	$915	.70	$17,828	.044	$784	$39	3.6%	4.2%	3.8%
50th	$28,578	.83	$23,577	$25,827	$988	.70	$20,005	.0468	$936	$47	3.5%	4.2%	3.8%
55th	$32,793	.80	$26,235	$27,956	$1,064	.65	$21,316	.048	$1,023	$51	3.2%	4.1%	3.8%
60th	$37,009	.78	$28,682	$30,085	$1,140	.65	$24,056	.05	$1,203	$60	3.1%	4.0%	3.8%
65th	$41,224	.75	$30,918	$32,213	$1,215	.65	$26,795	.051	$1,367	$68	2.9%	3.9%	3.8%
70th	$45,439	.73	$32,943	$34,342	$1,291	.60	$27,263	.053	$1,445	$72	2.8%	3.9%	3.8%
75th	$56,663	.70	$39,664	$39,846	$1,505	.60	$33,998	.055	$1,870	$93	2.7%	3.8%	3.8%
80th	$67,887	.68	$45,823	$45,351	$1,719	.60	$40,732	.057	$2,322	$116	2.5%	3.8%	3.8%
85th	$79,110	.65	$51,422	$50,855	$1,933	.55	$43,511	.06	$2,611	$131	2.4%	3.8%	3.8%
90th	$90,334	.63	$56,459	$56,359	$2,147	.55	$49,684	.06	$2,981	$149	2.4%	3.8%	3.8%
95th	$101,558	.60	$60,935	$61,863	$2,361	.50	$50,779	.06	$3,047	$152	2.3%	3.9%	3.8%
96th to the 100th	$112,782	.60	$67,669	$67,368	$2,575	.50	$56,391	.06	$3,383	$169	2.3%	3.8%	3.8%

Data source:

Consumer Expenditure Survey, U.S. Dept. of Labor, Dept. of Labor Statistics, Report 904

1st Quarter 1995

**** Note: Expenditures exceed income in the lower income brackets. This is, in part, due to transfer payments and subsidizations. In the higher income brackets, spending in excess of net income represents the creation of indebtedness.